estates of personalty.[16] However, several other different conclusions may be drawn from the opinion: (2) that only "remainders," whether realty or personalty, need vest within the period; other future estates need only not suspend alienability. This would perhaps reconcile the leading case on the other side.[18] (3) Or, that all future estates, of both kinds of property, are subject to the test as to vesting. This would hardly follow from § 40, which mentions only remainders of realty, but as to personalty would be the effect of what this case calls the natural sense of "absolute ownership"; as to realty would necessitate the theory that the common law (except as to the period) is in force as to estates not covered by § 40. (4) Or finally, as the court admits, the principal case on its facts may be merely one where a limitation after an invalid trust is held bad,[14] and hence the whole opinion dicta. It is needless to observe that this case, based on an obscure clause hardly before noticed, and on precedents not squarely in point, heedless of contrary authority and opinion, and careless in defining its own limits, seems unlikely to satisfy the bar of New York, however satisfactory the same result would be if achieved by legislative amendment.

CONSTITUTIONALITY OF A STATUTE REQUIRING THE SURRENDER OF UNCLAIMED BANK DEPOSITS TO THE STATE. — At common law the continued and inexplicable absence of a person from the jurisdiction for seven years was such *prima facie* evidence of death as to give the probate court jurisdiction to appoint an administrator to administer his estate.[1] But, even in a collateral suit, in the absence of statute, proof that he was alive at the time of the appointment of the administrator was sufficient to establish that the court had no jurisdiction and the administrator no authority.[2] Nor has a state power to declare by statute that a person absent and unheard of for a certain lapse of time shall be conclusively presumed to be dead so as to give a probate court jurisdiction; for this would constitute a taking of property without due process of law within the meaning of the Fourteenth Amendment.[3] But a clear distinction is drawn between the administration of the estates of absentees and of those of deceased persons; and a Pennsylvania statute[4] requiring, in addition to a reasonable presumption of death, adequate notice according to the circumstances, and reasonable safeguards for the return of the property to the absentee in case he should prove to be alive, was upheld by the Supreme Court on the ground that such administration is based primarily on the absence of the person whose estate is sought to be administered, and not upon his death.[5]

A Massachusetts statute has gone a step further.[6] It provides that the probate court shall, at the request of the Attorney-General, order that all deposits with any savings bank or trust company to the credit of depositors which have remained unclaimed for more than thirty years and for which the depositor cannot be found be paid to the state treasurer, subject to be

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[18] Sawyer *v.* Cubby, *supra.*

[1] Wentworth *v.* Wentworth, 71 Me. 72.

[2] Griffith *v.* Frazier, 8 Cranch (U. S.) 9, 23; Jochumsen *v.* Suffolk Savings Bank, 3 Allen (Mass.) 87.

[3] Scott *v.* McNeal, 154 U. S. 34.

[4] Laws of Pa. 1885, p. 155.

[5] Cunnius *v.* Reading School, 198 U. S. 458.

[6] St. 1908, c. 590, §§ 56–57.

repaid to the person having and establishing a lawful right thereto, with interest at the rate of three *per centum per annum*. In a recent Massachusetts case a savings bank which had been paying four *per centum per annum* to its depositors contended that the statute was unconstitutional, since it impaired the obligation of contracts; but the contention was overruled and the statute upheld. *Attorney-General* v. *Provident Inst. for Savings*, 86 N. E. 912 (Mass.). The case seems difficult to support on principle. A statute that says that money owed by A to B shall not be owed by A, but shall be owed by C, impairs the obligation of a contract and deprives a man of his property without due process of law.[7] And since the contract is changed without the parties' consent it is immaterial that something just as good is substituted in its place.[8] It is further to be noted that the purpose of this statute differs from that of the Pennsylvania statute in that the latter is designed to protect the rights of the absentee's wife and children, his creditors, and next of kin, whereas the former is not designed to protect the heirs or creditors of the absentee but to be of pecuniary profit to the State. Its operation, furthermore, not only does not protect them, but is a positive injury; for it substitutes for a four *per centum* interest claim against the savings bank a three *per centum* claim against the state. And though it can not be denied that the state is entitled by escheat to the property of a person dying without heirs or devisees and that it has power to fix a reasonable statute of limitations, after which no claim to abandoned property shall be recognized, yet the Massachusetts statute is not of this sort, since it does not purport to bar the claim of the absentee. The real purpose of the statute is the pecuniary profit of the state, and though that is a worthy object, it is not one for which the police power can be exercised, especially when it impairs the obligation of a contract.

RIGHTS OF CREDITORS IN CORPORATE ASSETS. — It has long been a favorite doctrine with many American courts that the capital stock and other assets of a corporation constitute a "trust fund" for the benefit of its creditors.[1] This has been given as the basis of the right of creditors to compel stockholders to pay in full for stock issued to them as a bonus, or for less than the par value, under an agreement with the corporation that nothing more should be payable.[2] But it is now becoming generally recognized that this right, so far as it exists, rests on grounds of fraud.[3] The doctrine has also been invoked in order to set aside a distribution of the corporate assets to the stockholders when debts are left unpaid,[4] and to avoid a conveyance of the corporate assets to another corporation that is not a purchaser in good faith.[5] But these two cases can be rested on the ordinary doctrines of fraudulent conveyances:[6] it is unnecessary to resort to a fictitious trust.

As to what constitutes a fraudulent conveyance by a corporation, the test is the same as in the case of natural persons.[7] Accordingly, a corporation

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[7] Bank of Louisville *v.* Board of Trustees, 83 Ky. 219.
[8] Dartmouth College *v.* Woodward, 4 Wheat. (U. S.) 518, 662.

[1] Woods *v.* Dummer, 3 Mason (U. S.) 308. See 9 HARV. L. REV. 481.
[2] Scovill *v.* Thayer, 105 U. S. 143. See 22 HARV. L. REV. 319.
[3] Hospes *v.* Car Co., 48 Minn. 174.
[4] Woods *v.* Dummer, *supra*. See Angle *v.* Ry., 151 U. S. 1.
[5] R. R. *v.* Howard, 7 Wall. (U. S.) 392.
[6] See Goddard *v.* Importing Co., 9 Col. App. 306.
[7] See Hamilton *v.* Quarry Co., 106 Wis. 352.